

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW MEXICO**

DENNIS MURPHY, Guardian Ad Litem for N.E.D., an  
incapacitated minor; JACOB  
DOTSON; DOMINQUE BILLY, individually and as next  
friend of I.C. and S.D., minors

Plaintiffs,

v. No. 1:17-cv-00384 JAP/JHR

THE UNITED STATES OF AMERICA,

Defendant.

**PLAINTIFFS' OBJECTIONS TO DEFENDANT'S  
COUNTER-DESIGNATIONS**

Plaintiffs hereby file their objections to Defendant's counter-designations filed March 4, 2019 (Doc. 154).

**Stephen Waite, M.D. - Videotaped Deposition, November 9, 2017**

<b><i>Plaintiffs' Designations (Page/Lines)</i></b>	<b><i>Defendant United States' Objections</i></b>	<b><i>United States' Counter-Designations</i></b>	<b><i>Plaintiffs' Objections</i></b>	<b><i>Court's Ruling</i></b>
6:7-9	FRE 106/FRCPP 32(a)(6) (misleading and incomplete without United States' counter designation)	6:7 – 7:5; 7:24 – 9:2	FRE 403	
8:23-25	FRE 106/FRCPP 32(a)(6)			
9:6-25	FRE 106/FRCPP 32(a)(6)	13:5 – 15:10	FRE 403	
10:1-15	FRE 106/FRCPP 32(a)(6)			
11:2-13	FRE 106/FRCPP 32(a)(6)			
15:8-10	FRE 106/FRCPP 32(a)(6)			
16:4-6	FRE 401 (relevance)			
19:20-25	FRE 401 (relevance)			
20:1-2, 23-25	FRE 106/FRCPP 32(a)(6)	20:3, 20:7-8		
21:1-4	FRE 106/FRCPP 32(a)(6)			

22:5-20, 25	FRE 401 (relevance); and FRE 403 (any probative value outweighed by unfair prejudice)			
23:1-7, 12-13	FRE 401/403/106/FRCP 32(a)(6)			
23:18-24	FRE 106/FRCP 32(a)(6)			
27:24-25	FRE 106/FRCP 32(a)(6)			
28:1-25	FRE 106/FRCP 32(a)(6)			
29:1-25	FRE 106/FRCP 32(a)(6)			
30:1	FRE 106/FRCP 32(a)(6)			
31:11-16	FRE 106/FRCP 32(a)(6)			
34:8-11	FRE 106/FRCP 32(a)(6)			
36:3-37:2	FRE 106/FRCP 32(a)(6)			
37:19-25	FRE 106/FRCP 32(a)(6)			
38:1-25	FRE 106/FRCP 32(a)(6)			
39:1-25	FRE 106/FRCP 32(a)(6)			
40:1-19	FRE 106/FRCP 32(a)(6)			
41:13-15	FRE 106/FRCP 32(a)(6)			
42:4-19, 23-25	FRE 106/FRCP 32(a)(6)			
43:1-5	FRE 106/FRCP 32(a)(6)			

43:18-44:20	FRE 106/FRCPP 32(a)(6)			
45:18-23, 25	FRE 106/FRCPP 32(a)(6)			
46:1-13	FRE 106/FRCPP 32(a)(6)			
49:8-50:1	FRE 106/FRCPP 32(a)(6)			
50:9-21	FRE 106/FRCPP 32(a)(6)			
51:25- 52:25	FRE 106/FRCPP 32(a)(6)			
53:1-54:17	FRE 106/FRCPP 32(a)(6)			
55:9-19	FRE 106/FRCPP 32(a)(6)			
55:25-57:16	FRE 106/FRCPP 32(a)(6)			
57:25-60:20	FRE 106/FRCPP 32(a)(6)			
61:16-25	FRE 106/FRCPP 32(a)(6)			
62:4-8, 19-21	FRE 106/FRCPP 32(a)(6)			
64:18- 65:13	FRE 106/FRCPP 32(a)(6)			
66:21-25	FRE 106/FRCPP 32(a)(6)			
67:7-25	FRE 106/FRCPP 32(a)(6)			
69:17-21	FRE 106/FRCPP 32(a)(6)			
71:19-72:2	FRE 106/FRCPP 32(a)(6)			
76:23-77:25	FRE 106/FRCPP 32(a)(6)			
78:18-23	FRE 106/FRCPP 32(a)(6)			
79:22-80:2	FRE 106/FRCPP 32(a)(6)			
83:6-22	FRE 106/FRCPP 32(a)(6)			
88:4-11	FRE 106/FRCPP 32(a)(6)	86:11 – 88:11; 89:5 – 90:5	FRE 402, 403, 401, 602	
90:11-21	FRE 106/FRCPP 32(a)(6)			
91:3-92:14	FRE 106/FRCPP 32(a)(6)			

**Kelli Coggins, R.N., Videotaped Deposition February 21, 2018**

<b><i>Plaintiffs' Designations (Page/Lines)</i></b>	<b><i>Defendant United States' Objections</i></b>	<b><i>United States' Counter-Designations</i></b>	<b><i>Plaintiffs' Objections</i></b>	<b><i>Court's Ruling</i></b>
6:20 – 21	FRE 106/FRCPP 32(a)(6)			
11:6-17, 20-24	FRE 106/FRCPP 32(a)(6)	9:25 – 10:3, 6-13; 13:2-11		
33:25 – 34:2	FRE 106/FRCPP 32(a)(6)			
34:5 – 35:3	FRE 106/FRCPP 32(a)(6)			
35:6-17, 20-25	FRE 106/FRCPP 32(a)(6)			
36:1-9	FRE 106/FRCPP 32(a)(6)	36:12-13, 16-17	FRE 401, 402, 601, 602	
38:5 – 39:4	FRE 106/FRCPP 32(a)(6)	39:20-25; 41:7-9; 50:12-23;		

		55:1-8, 12-13; 64:7-11, 15-6; 65:4-8; 70:23-25:	FRE 401, 402, 601, 602,701	
70:8 – 72:9	FRE 802 (double hearsay)			
73:13 – 19	FRE 106/FRCPP 32(a)(6)			
74:14 – 75:11	FRE 106/FRCPP 32(a)(6)			
75:14 – 76:16	FRE 106/FRCPP 32(a)(6)			
76:18 – 77:8	FRE 106/FRCPP 32(a)(6)			
77:11 – 78:6	FRE 106/FRCPP 32(a)(6)			
78:10 – 15	FRE 106/FRCPP 32(a)(6)			
78:18 – 79:5	FRE 106/FRCPP 32(a)(6)			
79:7-13, 16-21	FRE 106/FRCPP 32(a)(6)			
79:24 – 25	FRE 106/FRCPP 32(a)(6)			
80:6 – 81:12	FRE 602 (Lack of personal knowledge); Peer review privilege, <i>see</i> NMSA 1978 § 41-9-5; self-critical or self-evaluation privilege, <i>Weekoty v. United States</i> , 30 F. Supp. 2d 1343, 1348 (D.N.M. 1998).			
81:20 – 22	Peer review privilege, <i>see</i> NMSA 1978 § 41-9-5; self-critical or self-evaluation privilege, <i>Weekoty v. United States</i> , 30 F. Supp. 2d 1343, 1348 (D.N.M. 1998).			
81:24 – 82:8	FRE 106/FRCPP 32(a)(6)			
82:10 – 11, 14-23	FRE 106/FRCPP 32(a)(6)			
83:1	FRE 106/FRCPP 32(a)(6)			
88:22 – 89:14	FRE 106/FRCPP 32(a)(6)	88:16-17; 88:20-21		
89:20 – 90:2	FRE 106/FRCPP 32(a)(6)			
90:13 – 91:5	FRE 106/FRCPP 32(a)(6)			
91:8 – 16	FRE 106/FRCPP 32(a)(6)			
91:19 – 92:6	FRE 106/FRCPP 32(a)(6)			
92:10-18, 20-24	FRE 106/FRCPP 32(a)(6)			
93:1-9	FRE 106/FRCPP 32(a)(6)	93:5-12; 93:15-19; 93:21-22	FRE 401, 402, 601, 602,	

**Richard Tyler, Videotaped Deposition March 19, 2018**

<b><i>Plaintiffs' Designations (Page/Lines)</i></b>	<b><i>Defendant United States' Objections</i></b>	<b><i>United States' Counter-Designations</i></b>	<b><i>Plaintiffs' Objections</i></b>	<b><i>Court's Ruling</i></b>
5:3-8	FRE 403/106/FRCPP 32(a)(6)			
7:21-8:16	FRE 403/106/FRCPP 32(a)(6); FRE 602 (Lack of Personal knowledge)	5:12-15; 5:18-6:5; 6:10-14; 9:24-10:2; 10:14-17; 12:7-11; 16:6-12; 17:4-6; 23:16-17, 20; 38:7-11, 14-17;	FRE 401, 402, 403, 602 FRE 401, 402, 403, 602 FRE 401, 402, 403, 602 FRE 401, 402, 403, 602 FRE 401, 402, 403, 602 FRE 401, 402, 403, 602 FRE 401, 402, 403, 602 FRE 401, 402, 403, 602 FRE 401, 402, 403, 602 FRE 401, 402, 403, 602	
12:12-13:20; 25	FRE 403/106/FRCPP 32(a)(6); FRE 602 (Lack of Personal knowledge)			
14:10-15:24	FRE 403/106/FRCPP 32(a)(6)	23:16-17, 20.	FRE 401, 402, 403, 602	
18:18-19:6	FRE 403/106/FRCPP 32(a)(6)	22:24-23:2	FRE 401, 402, 403, 602	
29:14-30:25	FRE 403/106/FRCPP 32(a)(6); FRE 701 (Lay witness testimony)	33:13-15; 34:10-12; 38:7-11, 14-17	FRE 401, 402, 403, 602	

**Ernest Sandoval, Videotaped Deposition, March 19, 2018**

<b><i>Plaintiffs' Designations (Page/Lines)</i></b>	<b><i>Defendant United States' Objections</i></b>	<b><i>United States' Counter-Designations</i></b>	<b><i>Plaintiffs' Objections</i></b>	<b><i>Court's Ruling</i></b>
5:5-12	FRE 403/106/FRCPP 32(a)(6)	5:5-12; 5:16-18; 5:22-25 – 6:3; 7:1-5		
8:2-10	FRE 403/106/FRCPP 32(a)(6)			
9:19-21	FRE 401 (relevance);			
11:3-16	FRE 602 (Lack of personal knowledge); FRE 802 (hearsay)	10:6-20; 11:3-6		
21:1-9, 12-25	FRE 403/106/FRCPP 32(a)(6); FRE 602 (Lack of Personal knowledge); FRE 701 (Lay witness testimony)			

22:1-11, 15-25	FRE 602 (Lack of Personal knowledge); FRE 701 (Lay witness testimony)			
23:1-12	FRE 602 (Lack of Personal knowledge); FRE 701 (Lay witness testimony)			
26:10-11, 13-25	FRE 602 (Lack of Personal knowledge); FRE 701 (Lay witness testimony)			
27:1-7, 12-19	FRE 602 (Lack of Personal knowledge); FRE 701 (Lay witness testimony)			
29:9-24	FRE 602 (Lack of Personal knowledge); FRE 701 (Lay witness testimony)			
30:17 – 31:1-6	FRE 602 (Lack of Personal knowledge); FRE 701 (Lay witness testimony); FRE 802 (hearsay)	34:1-7; 36:1-17; 54:1-7, 10-11;		
60:15-22	FRE 602 (Lack of Personal knowledge); FRE 701 (Lay witness testimony); FRE 802 (hearsay)	64:1-3, 6-12		
64:13 – 66:8	FRE 602 (Lack of Personal knowledge); FRE 701 (Lay witness testimony)			
72:5-13, 16	FRE 106/FRCPP 32(a)(6)			
75:24 – 76:6	FRE 106/FRCPP 32(a)(6)			
76:8 – 77:17	FRE 106/FRCPP 32(a)(6)			
77:20-24	FRE 106/FRCPP 32(a)(6)			
78:2-12	FRE 106/FRCPP 32(a)(6)			
78:14 – 79:1	FRE 106/FRCPP 32(a)(6)	79:7 – 80:14	FRE 401, 402, 403, 602	
80:19 – 81:1	FRE 106/FRCPP 32(a)(6)	81:22 – 82:10		

**Ella Begay, Videotaped deposition, November 7, 2017**

<b><i>Plaintiffs' Designations (Page/Lines)</i></b>	<b><i>Defendant United States' Objections</i></b>	<b><i>United States' Counter-Designations</i></b>	<b><i>Plaintiffs' Objections</i></b>	<b><i>Court's Ruling</i></b>
6:11 – 13	FRE 403/106/FRCP 32(a)(6)	6:11 – 13; 8:7-23 – 9:6; 10:7-15; 11:10-13, 16-21; 13:16-20; 14:1-6	FRE 403	
18:17 – 19:1	FRE 403/106/FRCP 32(a)(6); FRE 602	16:2-17; 17:17-19; 23:15-18; 23:22-24	FRE 403	
19:13 – 18	FRE 403/106/FRCP 32(a)(6); FRE 602	19:2-12, 15-18	FRE 401, 403	
20:18 – 21:21	FRE 401/403			
23:5 – 8	FRE 401/403			
24:5 – 10	FRE 401/403	25:4-7	FRE 401, 403	
26:14 – 27:15	FRE 401/403/106/FRCP 32(a)(6);	27:8-15	FRE 401, 403 FRCP 32(a)(6)	
30:14 – 32:6	FRE 106/FRCP 32(a)(6)	32:11-16 32:17 – 33:1; 33:4-12; 48:21-24; 49:2-4	FRE 401, 403 FRCP 32(a)(6)	
32:17 – 33:17, 20-25	FRE 106/FRCP 32(a)(6)	34:17-20 48:21-24; 49:2-4	FRE 401, 403	
35:8 – 25	FRE 106/FRCP 32(a)(6)	35:1-6; 35:14-21	FRE 401, 403	
36:8 – 20	FRE 106/FRCP 32(a)(6)	36:18-23	FRE 401, 403	
37:5 – 38:2	FRE 106/FRCP 32(a)(6)			
38:6 – 7	FRE 106/FRCP 32(a)(6)			
38:9-12, 14-15, 17-25	FRE 106/FRCP 32(a)(6)			
39:1-12, 21-25	FRE 802 (hearsay)			
40:1-3, 10-25	FRE 802 (hearsay)			
41:1-4	FRE 802 (hearsay)			
44:4 – 9	FRE 106/FRCP 32(a)(6)	44:10-13	FRE 401, 403	
45:15 – 46:20	FRE 106/FRCP 32(a)(6)	63:8-19	FRE 401, 403	
46:23 – 47:3	FRE 106/FRCP 32(a)(6)	46:21-22	FRE 401, 403	

49:9 – 15	FRE 106/FRCPP 32(a)(6)			
50:7 – 51:3	FRE 602; FRE 701			
52:22 – 25	FRE 106/FRCPP 32(a)(6)			
56:12 – 58:1	FRE 106/FRCPP 32(a)(6)			
59:12 – 61:16	FRE 106/FRCPP 32(a)(6)	59:5-11; 60:20-22; 61:12-16, 20-21; 62:18-24;	FRE 701	
61:20 – 62:2	FRE 106/FRCPP 32(a)(6)	59:5-11; 60:20-22	FRE 701	
63:8 – 19	FRE 106/FRCPP 32(a)(6)	64:1-5	FRE 401, 403, 701	
64:13 – 65:8	FRE 602; FRE 701			

**Philip McNeil, MD, Videotaped Deposition, March 19, 2018**

<i><b>Plaintiffs' Designations (Page/Lines)</b></i>	<i><b>Defendant United States' Objections</b></i>	<i><b>United States' Counter-Designations</b></i>	<i><b>Plaintiffs' Objections</b></i>	<i><b>Court's Ruling</b></i>
5:5-14	FRE 106/FRCPP 32(a)(6)			
8:10-12:14	FRE 602; FRE 802	12:18-20; 15:18-22; 47:18-48:4		
12:24-13:18	FRE 602; FRE 802. <i>See 63:22 – 64:4; 64:10-15 of Judy Romero's deposition.</i>	14:9-11; 14:22 – 15:1; 19:20-24; 24:7-13; 28:21 – 29:18; 42:21 – 43:18; 44:2-9; 44:13 – 45:2	FRE 401,402,603  FRE 401,402,603  FRE 401,402,603 FRE 401,402,603	
34:18-36:22	FRE 602; FRE 802			



**Judy Romero, Ph.D., Deposition of April 3, 2018**

<b><i>Plaintiffs' Designations (Page/Lines)</i></b>	<b><i>Defendant United States' Objections</i></b>	<b><i>United States' Counter-Designations</i></b>	<b><i>Plaintiffs' Objections</i></b>	<b><i>Court's Ruling</i></b>
3:10-13, 24-25	FRE 106/FRCP 32(a)(6)	4:1-5, 11-19; 13:23 – 14:14;		
31:23-32:25	FRE 106/FRCP 32(a)(6); FRE 602; FRE 802	9:13-15; 32:13-20; 32:24 – 33:12; 47:23-48:5; 48:11-14; 54:4-10; 55:10– 56:10; 61:10-13; 63:22 – 64:4; 64:10-15		
74:24-75:2	FRE 403; FRE 602			
75:5-6, 9-25	FRE 403; FRE 602			
76:1-4	FRE 403; FRE 602	76:11-15	FRE 401,403,602, 603, 703	

Respectfully submitted,

/s/ Theodore W. Barudin

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

For Defendant: Erin Langenwalter – [Erin.Langenwalter@usdoj.gov](mailto:Erin.Langenwalter@usdoj.gov)  
Ruth F. Keegan - [Ruth.F.Keegan@usdoj.gov](mailto:Ruth.F.Keegan@usdoj.gov)

/s/ Theodore W. Barudin  
**Theodore W. Barudin**